

**FAIRFAX COUNTY PLANNING COMMISSION
POLICY AND PROCEDURES COMMITTEE
WEDNESDAY, NOVEMBER 16, 2005**

COMMITTEE MEMBERS PRESENT:

Walter A. Alcorn, At-Large
John R. Byers, Mount Vernon District
Janet R. Hall, Mason District
Suzanne F. Harsel, Braddock District
James R. Hart, at-Large
Nancy Hopkins, Dranesville District
Laurie Frost Wilson, At-Large

COMMITTEE MEMBER ABSENT:

None

OTHER PLANNING COMMISSION MEMBERS PRESENT:

Frank A. de la Fe, Hunter Mill District
Kenneth A. Lawrence, Providence District

OTHERS PRESENT:

Barbara Byron, Director, Zoning Evaluation Division, Department of Planning and
Zoning
Barbara J. Lippa, Executive Director, Planning Commission Office
Linda B. Rodeffer, Clerk, Planning Commission Office

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Chairman Janet R. Hall called the meeting to order at 7:30 p.m. in the Board of Supervisors' Conference Room, Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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Chairman Hall noted that the first item on the agenda tonight was approval of Committee minutes.

Commissioner Byers MOVED THAT MINUTES OF MARCH 9, 2005, MARCH 31, 2005; MAY 12, 2005, AND JUNE 15, 2005 BE APPROVED.

Commissioner Alcorn seconded the motion which carried unanimously.

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Chairman Hall said next the Committee would discuss condemnation policy issues. She noted that the Planning Commission had held a closed session on October 19, 2005 with staff from the

County Attorney's Office to discuss *Kelo v. City of New London* and its potential impact on Fairfax County.

Commissioner Alcorn explained that the Planning Commission had heard several cases recently where concerns had been raised about the appropriate use of condemnation proffers.

Barbara Byron, Director, Zoning Evaluation Division, Department of Planning and Zoning, explained that the Board of Supervisors had been accepting condemnation proffers for 30 years. She said it was generally used to obtain public right-of-way, noting that it had been used for extensive road improvements in and around the McNair Farms area. She said that acceptance and implementation of this proffer was not contrary to the recent *Kelo v. City of New London* case and did not obligate the Board to condemn property, but was used as a contingency. Ms. Byron said staff hoped that the Committee would continue to view this as an appropriate proffer. She explained that there were three types of condemnation procedures: a quick-take, friendly, or adverse. She said a "quick take" was used when a road improvement had to be done quickly with details worked out at a later date; "friendly" was when both parties were in agreement; and "adverse" was when the property owner was not willing to sell. She emphasized that in an adverse take, the County always got the land, but the price was determined by a special commissioner after a hearing. She also said that density credit could be given for dedication of property.

In response to a question from Commissioner Wilson, Ms. Byron stated that in the McNair Farms case, the applicant, known as "Batman," who had developed 5,000 dwelling units and a shopping center in the 1980s, claimed that he had committed to more road improvements per capita than anyone in the history of Fairfax County.

Commissioner de la Fe pointed out that the Planning Commission would soon hear the "Launders" application, the last development in the McNair Farms area, which had a condemnation proffer for construction easements.

Ms. Byron cited recent cases involving improvements to Rugby Road, which also had condemnation proffers because it was the best way to get road improvements without the expenditure of public funds. She said hopefully the applicant would be able to obtain the right-of-way, but if not the proffer would be a fallback mechanism the Board could use.

Ms. Byron commented that in the recent closed session, a County attorney had presented a list of the number of times the Board had actually condemned property since 1989 which was short.

Commissioner Hart said that while he did not have a problem with the wording or concept of the proffer, he was concerned about the impression the County conveyed when land was condemned to facilitate approval of applications. He said perhaps it was time applications were denied if the developer was not able to make road improvements without relying on a condemnation proffer. He said Commissioner Alcorn had suggested developing criteria to determine under what circumstances condemnation of property would be appropriate.

Ms. Byron agreed that an application could be denied, but said it might be hard to justify if the sole reason for denial was condemnation, if the development was small, or if the property owner was holding out in the hope of getting an exorbitant amount of money. She added that she thought guidelines would be helpful and said this issue needed to be discussed in-depth. Commissioner Hart pointed out that oftentimes owners held out just because they wanted to be left alone or because their property would be dramatically changed with a shortened front or back yard or a steep slope.

Chairman Hall said she had recently had a case in the Mason District, F.F. Realty, in which the applicant's representative, during the public hearing, said condemnation of property to acquire right-of-way for road improvements had not been discussed. She noted that the improvements were not desired by the applicant but by the Virginia Department of Transportation who was not willing to fund it. She said she had recommended approval of the application with the deletion of the condemnation proffer. Ms. Byron said that the condemnation proffer had been added before the BOS public hearing.

Commissioner Wilson commented that she had been troubled by the applicant's assumption in the Mason District case that a condemnation proffer would automatically be supported by staff and the Planning Commission. She cited another case in the Mount Vernon District on Gunston Cove Road where the applicant contended the impact of development had been mitigated because a proffer required the construction of road frontage improvements, but only if the Board condemned the property. She said some had questioned if this was a proper use of eminent domain. Commissioner Wilson suggested that the staff report should indicate and the district commissioner be advised that condemnation was absolutely necessary for the development. She also suggested the Board review a proposed condemnation prior to rezoning to determine if they would be willing to support it. Ms. Byron said that a condemnation policy would need to be reviewed by the Board but she did not think it would be binding because Board membership changed over time.

Commissioner Lawrence said it would be helpful to have a chart indicating under what circumstances an application with a condemnation requirement could be denied.

Commissioner Alcorn pointed out that the nexus between an overall need for a public facility and its need only for a particular development was not always clear. He added that condemnation guidelines might include the requirement that the property remain in public ownership or that it was in support of an improvement shown in the Comprehensive Plan.

After discussion about the use of condemnations to acquire land for turn lanes and road improvements shown in the Comprehensive Plan, Commissioner Alcorn said perhaps criteria should include whether or not the condemnation was solely needed to serve a developer and if a good faith effort had been made to acquire the land. He requested feedback from staff about the feasibility of using guidelines and the appropriate mechanism for doing so.

Commissioner Harsel suggested guidelines address the responsibility of new smaller developments to provide road improvements which had not been required of larger existing developments.

Chairman Hall said another committee meeting would be scheduled to discuss this issue further. Ms. Byron suggested that the Fairfax County Department of Transportation, the Virginia Department of Transportation, and the County Attorney's Office be invited to attend.

Ms. Byron said a Policy and Procedures Committee meeting should also be scheduled in the new year to discuss the requirements of the State code for the length of time the Planning Commission had to act upon zoning text amendments and map amendments when initiated by the Board of Supervisors.

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The meeting was adjourned at 8:15 p.m.
Janet R. Hall, Chairman

For a verbatim record of this meeting, reference may be made to the audio recording which can be found in the Office of the Planning Commission of Fairfax County, Virginia.

Minutes by: Linda B. Rodeffer

Approved: March 2, 2006

Linda B. Rodeffer, Clerk
Fairfax County Planning Commission